

HIKO BELL MINING AND OIL CO.

IBLA 83-441

Decided October 17, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 14909 through N MC 14916.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work of Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claim and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Robert E. Covington, Secretary-Treasurer, Hiko Bell Mining and Oil Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Hiko Bell Mining and Oil Company (Hiko Bell) appeals the February 24, 1983, decision of the Nevada State Office, Bureau of Land Management (BLM),
76 IBLA 254

which declared the unpatented Black Butte, Silver Queen, Crown Point, Free Coinage, Gold Standard, Treasury Vault, Gold Coin, and Golden Queen lode mining claims, N MC 14909 through N MC 14916, abandoned and void because no proof of labor or notice of intention to hold the claims for 1982 was filed with BLM on or before December 30, 1982, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Hiko Bell states that a copy of the 1982 proof of labor was mailed to BLM on November 4, 1982, after recordation in Elko County, Nevada. The appeal was accompanied by a proof of labor for 1982 for the Black Butte A, Silver Queen A, Crown Point A, Free Coinage A, Gold Standard A, Treasury Vault A, Gold Coin A, and Golden Queen A lode mining claims, N MC 195842 through N MC 195849. ^{1/} The claims named in the decision on appeal were located in 1922 and 1932 and were recorded with BLM January 16, 1978. A proof of labor was filed with BLM each year through 1981.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located before October 21, 1976, to file with the proper office of BLM on or before October 22, 1979, a copy of the official record of the notice of location and evidence of assessment work performed on the claim or a notice of intention to hold the claim, and a proof of labor or notice of intention to hold the claim prior to December 31 of each calendar year thereafter. The statute also provides that failure to file such instruments within the prescribed time periods shall be deemed conclusively to constitute an abandonment of the claim. As no proof of labor or notice of intention to hold the claims for 1982 was filed with BLM by December 30, 1982, BLM properly deemed the claims to be abandoned and void. J & B Mining Co., 65 IBLA 335 (1982); Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision

^{1/} In April 1981, appellant amended and/or relocated the original eight claims, identifying them as follows: Black Butte A, Silver Queen A, Crown Point A, Free Coinage A, Gold Standard A, Treasury Vault A, Gold Coin A, and Golden Queen A. The location notices were recorded with BLM May 15, 1981, and were given serial numbers N MC 195842 through N MC 195849. Examination of the files for these claims likewise does not indicate that any proof of labor or notice of intention to hold was filed with BLM in 1982, prior to December 31. Presumably, BLM, in the future, will issue a decision declaring these claims abandoned and void for failure to comply with the requirements of FLPMA in 1982.

of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute or to afford claimants any relief from the statutory consequences. Lynn Keith, supra at 196, 88 I.D. at 371-72.

BLM has stated that it did not receive the 1982 proof of labor within the time limits prescribed in FLPMA. Appellant has not shown anything to the contrary. Therefore, it must be found that BLM was not acting improperly in its decision declaring the mining claims abandoned and void for failure to comply with the requirements of FLPMA.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Will A. Irwin
Administrative Judge

